

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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XIAMEN ITG GROUP CORP. LTD.,	:	
	:	
Petitioner,	:	
-vs.-	:	ECF Case No.
	:	
PEACE BIRD TRADING CORP.,	:	<u>PETITION TO CONFIRM</u>
	:	<u>ARBITRATION AWARD</u>
Respondent.	:	
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Petitioner Xiamen ITG Group Corp. Ltd. (“Xiamen ITG”), pursuant to Section 207 of the Federal Arbitration Act, 9 U.S.C., for an Order confirming a foreign arbitral award issued in its favor against Respondent Peace Bird Trading Corp. (“Peace Bird”), hereby states as follows:

PARTIES

1. Petitioner Xiamen ITG is a corporation organized and existing under the laws of the People’s Republic of China, with its registered legal address at: Unit 2801, Guomao Center, No. 4688, Xianyue Road, Huli District, Xiamen City, China 361016.

2. Respondent Peace Bird is a corporation organized and existing under the laws of the State of New York, with its principal office located at: 1441 67th Street, Unit 1B, Brooklyn, New York 11219.

JURISDICTION AND VENUE

3. This Petition is brought pursuant to the original jurisdiction of this Court as expressed in 9 U.S.C. §201, 202, 203, and 207, which codify, as Chapter 2 of the Federal Arbitration Act, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the “New York Convention”). The United States and China are signatories to, and has ratified, the New York Convention.

4. Alternatively, this Petition may be brought under the diversity jurisdiction of this Court, 28 U.S.C. § 1332(a)(2), since there is complete diversity of citizenship between the parties and the amount at issue is greater than \$75,000 exclusive of interest and costs.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because Respondent Peace Bird resides in this District and is subject to personal jurisdiction in this District.

AGREEMENTS UNDERLYING THE ARBITRATION AWARD

6. Between February and July 2017, the parties entered into a series of eight separate sales contracts, pursuant to which Xiamen ITG agreed to sell and Peace Bird agreed to buy, certain described commodities consisting of fabrics and textiles (the “Sales Contracts”). *See*, Declaration of Ruofei Xiang (“Xiang Decl.”), Exhibit A.

7. Each of the Sales Contracts provided for the arbitration of any dispute, controversy or claim arising out of or relating to the contracts before the China International Economic and Trade Arbitration Commission (“CIETAC”).

8. The arbitration clause further provides that the arbitration award shall be accepted as final and binding upon the parties.

9. Pursuant to the Sales Contracts, Xiamen ITG delivered the goods to Peace Bird and issued corresponding invoices in the total amount of \$1,185,753.97. *See*, Xiang Decl., Exhibit A.

10. Peace Bird failed to pay for the goods purchased and received from Xiamen ITG despite multiple reminders and demands by Xiamen ITG for payment.

11. Xiamen ITG commenced arbitration proceedings before CIETAC against Peace Bird on November 22, 2018 for the recovery of \$1,185,753.97 plus interest and costs, arising from the failure of Peace Bird to make payment to Xiamen ITG for the goods purchased and received.

THE ARBITRATION AND ARBITRAL AWARD

12. An arbitral tribunal was formed on April 16, 2019, with three arbitrators consistent with the arbitration clause in the Sales Contracts, to jointly conduct the arbitration proceedings.

13. The arbitration was conducted in Beijing through CIETAC on May 29, 2019 governed by the Arbitration Rules of China International Economic and Trade Arbitration Commission.

14. Both parties appeared in the arbitration and had a full and fair opportunity to present their respective cases and submit evidence.

15. On March 20, 2020, the Arbitral Tribunal rendered a final award. *See*, Xiang Decl. Exhibit B, true copy of the award; Exhibit C, certified English translation of the award.

16. The final award awarded Xiamen ITG (1) \$1,185,753.97 for the unpaid goods sold by Xiamen ITG to Peace Bird, (2) \$48,499.89 in interest up to November 6, 2018, and interest at the annual rate of 4.75% calculated from November 7, 2018 to the date the award is paid, and (3) arbitration costs of RMB 215,372, which is the rough equivalent of \$33,506.85 under current exchange rates. The Tribunal ordered that payments be made by Peace Bird within 30 days from the date of the award.

17. To date, Respondent has failed and/or refused to honor or satisfy the Final Award.

CONFIRMATION OF THE AWARD

18. Pursuant to 9 U.S.C. § 207, any party seeking to confirm a foreign arbitral award in accordance with the New York Convention may do so provided that the award: (a) falls under the New York Convention; (b) was issued less than three years ago; and (c) does not fall under any exception in the New York Convention for which confirmation may be refused.

19. The Final Award in all respects conforms to the requirements of 9 U.S.C. §§ 9 and 207 governing confirmation of arbitration awards.

20. No prior application for confirmation of the Final Award has previously been made in this or any other Court.

21. No grounds exist to support vacatur, modification or correction of the Final Award under 9 U.S.C. § 10 or § 11, and no such application has been made.

22. No grounds exist to support refusal or deferral of recognition or enforcement of the award specified in the New York Convention pursuant to 9 U.S.C. § 207, and no such application has been made.

WHEREFORE, Petitioner Xiamen ITG Group Corp. Ltd. respectfully requests judgment confirming and enforcing the arbitration award, fees and costs incurred in the prosecution of this Petition, and that the Court grant the Petitioner such other and further relief as may be just and equitable in the circumstances.

Dated: New York, NY
February 1, 2021

Respectfully submitted,

MAZZOLA LINDSTROM LLP

s/Ruofei Xiang
Ruofei Xiang
1350 Avenue of the Americas, 2FL
New York, NY 10019
Tel: (646) 663-1860
ruofei@mazzolalindstrom.com
Attorneys for Petitioner